



OPEN MEETING ITEM



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

2002 JUN 11 A 11:29

AZ CORP COMMISSION
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DATE: June 11, 2002

DOCKET NO: T-04078A-02-0028

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

ECI COMMUNICATIONS, INC. d/b/a ITS NETWORK SERVICES
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 20, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 25 AND 26, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 WILLIAM A. MUNDELL
4 CHAIRMAN
5 JIM IRVIN
6 COMMISSIONER
7 MARC SPITZER
8 COMMISSIONER

9 IN THE MATTER OF THE APPLICATION OF ECI
COMMUNICATIONS, INC. DBA ITS NETWORK
SERVICES FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
LOCAL EXCHANGE SERVICES

DOCKET NO. T-04078A-02-0028

DECISION NO. _____

ORDER

10 Open Meeting
11 June 25 and 26, 2002
12 Phoenix, Arizona

BY THE COMMISSION:

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On January 11, 2002, ECI Communications, Inc. dba ITS Network Services
17 ("Applicant" or "ECI") filed with the Arizona Corporation Commission ("Commission") an
18 application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive
19 resold interexchange telecommunications services, except local exchange services, within the State of
20 Arizona.

21 2. Applicant is a switchless reseller that purchases telecommunications services from a
22 variety of carriers for resale to its customers.

23 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
24 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
25 of the Commission.

26 4. ECI has authority to transact business in the State of Arizona.

27 5. On February 19, 2002, ECI filed an Affidavit of Publication indicating compliance
28

1 with the Commission's notice requirements.

2 6. On April 9, 2002, Staff filed in this docket a letter to the Applicant requesting
3 information necessary in order to make a fair value rate base finding.

4 7. On April 29, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff
5 Report in this matter recommending approval of the application subject to certain conditions, and
6 making other recommendations.

7 8. In the Staff Report, Staff stated that ECI provided financial statements for the three
8 months ending December 31, 2001, which list assets of \$1.1 million, total equity of \$743,279, and a
9 net income of \$37,140.

10 9. In its Staff Report, Staff stated that based on information obtained from the Applicant,
11 it has determined that ECI's fair value rate base is zero, and is too small to be useful in setting rates.
12 Staff further stated that in general, rates for competitive services are not set according to rate of return
13 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set
14 rates for ECI based on the fair value of its rate base.

15 10. Staff believes that ECI has no market power and that the reasonableness of its rates
16 will be evaluated in a market with numerous competitors. In light of the competitive market in which
17 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
18 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
19 approve them.

20 11. Staff recommended approval of ECI's application subject to the following:

21 (a) The Applicant should be ordered to comply with all Commission rules, orders,
22 and other requirements relevant to the provision of intrastate telecommunications
23 service;

24 (b) The Applicant should be ordered to maintain its accounts and records as
25 required by the Commission;

26 (c) The Applicant should be ordered to file with the Commission all financial and
27 other reports that the Commission may require, and in a form and at such times as the
28 Commission may designate;

(d) The Applicant should be ordered to maintain on file with the Commission all

current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations of customer complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's address or telephone number;

(i) If at some future date, the Applicant wants to collect from its customers an advance, deposit and/or prepayment, it must file information with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff would forward its recommendation to the Commission;

(j) The Applicant's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

12. Staff further recommended that ECI's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

13. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact No. 12 above, that ECI's Certificate should become null and void without further Order of the Commission, and that no time extensions for compliance should be granted.

14. The rates proposed by this filing are for competitive services.

15. Staff's recommendations as set forth herein are reasonable.

16. ECI's fair value rate base is zero.

...

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations in Findings of Fact Nos. 9, 20, 11, 12 and 13 should be adopted.

7. ECI's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. ECI's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of ECI Communications, Inc. dba ITS Network Services for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services, is hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 11, 12 and 13 above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 9, 10, 11, 12 and 13 above are hereby adopted.

IT IS FURTHER ORDERED that ECI Communications, Inc. dba ITS Network Services shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 11 and 13 above.

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IT IS FURTHER ORDERED that if ECI Communications, Inc. dba ITS Network Services fails to meet the timeframes outlined in Findings of Fact. No. 12 above that the Certificate conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of ____, 2002.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT
MES:dap

1 SERVICE LIST FOR: ECI COMMUNICATIONS, INC. DBA ITS NETWORK SERVICES

2 DOCKET NO.: T-04078A-02-0028

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